

DEPARTMENT OF STATE REVENUE

**LETTER OF FINDINGS NUMBER: 94-0639 CSET
Controlled Substance Excise Tax
For Tax Periods: 1994**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

1. CONTROLLED SUBSTANCE EXCISE TAX: IMPOSITION

Authority: IC 6-7-3-5

Taxpayer protests the assessment of Controlled Substance Excise Tax.

2. CONTROLLED SUBSTANCE EXCISE TAX: SEARCH

Authority: United States Constitution, Fourth Amendment

Taxpayer protests the use of evidence obtained in a police search.

3. CONTROLLED SUBSTANCE EXCISE TAX: DOUBLE JEOPARDY

Authority: United States Constitution, Fifth and Fourteenth Amendments, Bryant v. State of Indiana (1995)(Indiana Supreme Court).

Taxpayer contends that the imposition of the Controlled Substance Excise Tax violates his constitutional protection against double jeopardy.

STATEMENT OF FACTS

Taxpayer was arrested for possession of and dealing in marijuana on March 30, 1994. On July 29, 1994, the Indiana Department of Revenue issued a Jeopardy Tax Assessment against taxpayer in a base amount of \$54,660.00. The Prosecutor charged Taxpayer with a Class C Felony and a Class D Felony. After an evidentiary hearing, the Judge dismissed the criminal charges due to a finding that the search and seizure of the marijuana in evidence violated Taxpayer's fourth Amendment right to be free of unreasonable search and seizures.

1. CONTROLLED SUBSTANCE EXCISE TAX: IMPOSITION

DISCUSSION

IC 6-7-3-5 imposes the Controlled Substance Excise Tax on the delivery and possession of marijuana in the State of Indiana. A police statement and the lab report indicate that Taxpayer was in possession of marijuana. This is adequate evidence that Taxpayer possessed marijuana and is properly subject to the imposition of the Controlled Substance Excise Tax.

FINDING

Taxpayer's protest is denied.

2. CONTROLLED SUBSTANCE EXCISE TAX: SEARCH

DISCUSSION

Taxpayer contends that police violated his United States Constitution Fourth Amendment right to be free of unreasonable searches and seizures. Therefore, Taxpayer contends, the Department cannot impose the Controlled Substance Excise Tax. Tax proceedings are civil in nature. The criminal standards necessary for violation of Fourth Amendment rights do not apply to this tax case

FINDING

Taxpayer's protest is denied.

3. CONTROLLED SUBSTANCE EXCISE TAX: DOUBLE JEOPARDY

DISCUSSION

The Fifth and Fourteenth Amendments of the United States Constitution prohibit placing any citizen in jeopardy twice for the same action. Jeopardy attaches when a determination of guilt is made and a person is put at risk of punishment. Bryant v. State of Indiana (1995)(Indiana Supreme Court). In the instant case, Taxpayer was put at risk of punishment or in jeopardy by the Record of Jeopardy Finding, Jeopardy Assessment Notice and Demand on July 29, 1994. Taxpayer did not have a trial or sentencing in the criminal case so jeopardy did not attach. The Indiana Department of Revenue's jeopardy was the first and only jeopardy arising from this action. Therefore, the Indiana Department of Revenue did not violate Taxpayer's Fifth and Fourteenth Amendments to the United States Constitution.

FINDING

Taxpayer's protest is denied.